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BANKING, HOUSING, AND URBAN AFFAIRS
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United States Senate

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April 16, 2020

The Honorable Jerome H. Powell
Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Steve Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Chair Powell and Secretary Mnuchin:

I write to you in regard to last week's announcement that the Federal Reserve System (Fed), will provide \$850 billion worth of loans to large corporations through the new Primary and Secondary Market Corporate Credit Facilities and the Term Asset-Backed Securities Loan Facility. These bailouts will be backed by \$85 billion in Treasury Department funding provided through the Coronavirus Aid, Relief, and Economic Security (CARES) Act.¹

You have opened your proposals for comment until today, to allow stakeholders to provide input on how to "make sure the program supports the economy as effectively and efficiently as possible while also safeguarding taxpayer funds."² My comment is that I am extraordinarily disappointed that you have failed to even put in place basic protections to make sure that this nearly \$1 trillion worth of new loans achieves these goals.

I provided detailed input to you on how to make sure the new bailout program addresses the extraordinary economic needs of this era in a letter I sent to you on March 31, 2020.³ That letter noted that you have extensive authority, under the CARES Act and under the Fed's existing 13(3) authority, to "establish terms and conditions that protect jobs and workers' rights, or

¹ Board of Governors of the Federal Reserve System, "Federal Reserve takes additional actions to provide up to \$2.3 trillion in loans to support the economy," April 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>; Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136, <https://www.congress.gov/bill/116th-congress/house-bill/748>.

² *Id.*

³ Letter from Senator Elizabeth Warren to Federal Reserve Chairman Jeremy Powell and Treasury Secretary Steve Mnuchin, March 31, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.31%20Letter%20to%20Mnuchin%20re%20CARES%20Act.pdf>.

further limit executive compensation or shareholder distributions beyond the specifications in the legislation,” and asked that you “use this authority to ensure that bailout funds (1) are used to protect workers and not to reward corporate misbehavior; and (2) are protected by strong anti-corruption and transparency rules.”⁴

You have yet to reply to that letter, which provided eight clear and simple requirements for bailout recipients that you could put in place to protect workers and the economy, and five more guidelines to ensure that Fed and Treasury officials, and bailout recipients, act in an ethical and transparent fashion. In fact, the term sheets of the facilities that were released last week indicate that you have done far too little to assure that these bailouts help workers, taxpayers, and the economy. Although you did implement the CARES Act conflict of interest requirements for loan recipients, you did not take any action to protect workers from layoffs, prevent outsourcing, punish corporate criminals, end stock buybacks, or prevent executives from enriching themselves at workers’ and taxpayers’ expense.

You can and must do better for American workers, taxpayers, and the economy. I have attached a copy of the letter I sent you on March 31, 2020 explaining how to do so, and ask that you incorporate the principles outlined in that letter as you move forward with the corporate bailouts.

I appreciate your consideration of these matters and am happy to discuss them in more detail with you or your staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren", written over a horizontal line.

Elizabeth Warren
United States Senator

⁴*Id.*

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March 31, 2020

The Honorable Steve Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551

Dear Secretary Mnuchin and Chairman Powell:

I am writing regarding your broad authority under the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* to distribute hundreds of billions of dollars in “loans, loan guarantees, and other investments”¹ to large corporations in response to the economic collapse created by the novel coronavirus 2019 (COVID-19) pandemic. You should use this authority to ensure that bailout funds (1) are used to protect workers and not to reward corporate misbehavior; and (2) are protected by strong anti-corruption and transparency rules.

Any bailout funds should come with strict conditions to ensure that the funds are used to protect workers and the economy rather than just benefitting wealthy senior executives. While some protections are required in the legislation – for example, requiring that companies that receive these funds not engage in stock buybacks until after they have repaid their loan² – these statutory protections are insufficient and incomplete. But the legislation gives you the authority to fill this gap: it gives you extraordinary powers to make discretionary decisions about the recipients of this huge bailout for big corporations, and the terms and conditions under which they receive aid.

I will be watching carefully as you hand out these funds. The CARES Act gives the Secretary of the Treasury (the Secretary) the authority to impose terms and conditions on recipients of bailout funds. It requires at minimum that the Secretary “provide for a reasonable participation ... in equity appreciation ... or other equity interest ... or a reasonable interest rate premium,” and it prohibits the Secretary from “exercis[ing] voting power with respect to any shares of common stock acquired” via the bailout fund.³ But beyond that, it gives the Secretary vast discretion to make loans “on such terms and conditions and contain such covenants, representations,

¹ CARES Act, § 4003.

² CARES Act, § 4003(c)(2)(E)

³ CARES Act, § 4003(d)(2).

warranties, and requirements...as the Secretary determines appropriate.”⁴ As a result, the Secretary can choose to reject...companies that have long records of financial mismanagement or lawbreaking and establish terms and conditions that protect jobs and workers’ rights, or further limit executive compensation or shareholder distributions beyond the specifications in the legislation. Corporations that choose not to agree to these terms and conditions are free to seek funding elsewhere.

Similarly, under Section 13(3) of the *Federal Reserve Act*, the Federal Reserve retains the discretion to limit the eligibility of participants in any program or facility to only those entities who will be “subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.”⁵ The CARES Act made clear Congress’s intent that these provisions apply to coronavirus funds by stating “for the avoidance of doubt, any applicable requirements under section 13(3) of the Federal Reserve Act... shall apply with respect to any program or facility” created to disburse coronavirus relief.⁶ I expect the Federal Reserve to use its statutory authority to create clear and unambiguous requirements to ensure that these funds are used for their intended purpose: to provide support to workers during a time of crisis.

Not only do the Secretary and the Federal Reserve already possess the authority to ensure funds are used appropriately, the CARES Act is clear that there are circumstances where they are required to exercise it. The CARES Act funding reserved for airlines and for mid-sized businesses comes with strict guidelines, including requirements for payroll retention and protection for collective bargaining rights. There is no reason that these requirements should not apply to all companies that receive taxpayer assistance. Given your vast authority over the entire amount of these \$500 billion in funds, I ask that as you decide which big corporations benefit, and under what terms, you adhere to the following principles for the bailout:

- **Protect workers and do not reward corporate misbehavior.** For the last decade, corporate executives and wealthy investors have repeatedly acted in their own self-interest rather than the interests of workers. They have maximized shareholder value at great costs to workers and consumers to further enrich themselves. They have cut pay and benefits, ripped off consumers⁷ and taxpayers while taking advantage of weak enforcement by regulators,⁸ wasted billions of dollars buying back their own stock to boost their personal wealth,⁹ and managed to pay nothing in federal taxes despite raking in billions of dollars in profits.¹⁰ Many took billions of dollars in bailouts after the 2008 financial crisis, then set about to

⁴ CARES Act, § 4003(c)(1)(A).

⁵ 12 U.S. Code § 343 (3)(A).

⁶ CARES Act, § 4003(c)(3)(B).

⁷ See, e.g., Wells Fargo.

⁸ Sen. Elizabeth Warren, *Rigged Justice 2.0: Government of the Billionaires*, by the Billionaires, and for the Billionaires, March 2019, <https://www.warren.senate.gov/download/05/13/2019/rigged-justice-20-government-of-the-billionaires-by-the-billionaires-and-for-the-billionaires-4>.

⁹ New York Times, *The Stock Buyback Binge May be Over, For Now*, March 24, 2020, <https://www.nytimes.com/2020/03/24/business/coronavirus-stock-buybacks.html>, “Companies in the S&P 500 stock index spent more than \$2 trillion buying back their own stocks over the last three years.”

¹⁰ CBS News, *60 of America’s Biggest Companies Paid No Income Tax in 2018*, April 12, 2019, <https://www.cbsnews.com/news/2018-taxes-some-of-americas-biggest-companies-paid-little-to-no-federal-income-tax-last-year/>.

weaken and find loopholes in the laws designed to prevent a repeat of that crisis. You have an opportunity to put a stop to this misbehavior, and should provide backing to big companies only if they have a record of, and commitment to, following the nation's laws and prioritizing and protecting workers, consumers, and taxpayers.

At minimum, to meet this principle, you should require that any company that receives backing under the CARES Act:

- Uses federal funds to keep workers on the job, including maintaining at least 95% of payrolls.
 - Provide a \$15 an hour minimum wage by year's end.
 - Does not use taxpayer funds to personally enrich CEOs or senior executives through any form of executive compensation.
 - Does not shovel money out the door through stock buybacks, dividends, or any other direct or indirect form of shareholder distribution.
 - Provide at least one seat to workers on their board of directors.
 - End union-busting efforts and maintain collective bargaining agreements.
 - Require that CEOs make personal, annual certifications to Treasury and the Federal Reserve that their companies are complying with the rules, ensuring that these CEOs would face civil and criminal penalties for violating these terms.
 - Is liable to the federal government for all assistance received if the company violates any of the terms of their agreements with taxpayers.
- **Establish strong ethics and transparency rules.** The \$500 billion bailout fund cannot be handed out under the same old corrupt, insider-driven rules that – time and again – have resulted in great outcomes for the powerful and well-connected, and scraps for workers and middle-class families. As you administer the bailout fund, you must
 - Put in place strong conflict-of-interest protections so that no federal official, financial agent, contractor, or adviser has any say or influence over decisions that may affect their own portfolio, or that may affect a current or former employer,¹¹ and include strong post-employment restrictions to close the revolving door and prevent conflicts-of-interest.
 - Develop clear, public rules and guidelines regarding how and why you are choosing bailout recipients and how and why you are establishing the terms and conditions of any bailouts
 - Provide immediate and complete transparency (beyond the requirements in the CARES Act)¹² regarding which companies successfully or unsuccessfully seek bailout funds, and what commitments they make in order to obtain these funds.
 - Bar companies receiving funding from political spending or lobbying expenditures for the duration of the assistance.
 - Comply with all document and information requests and requests that you or other federal government officials appear as witnesses before the new Special

¹¹ See, e.g., Sen. Elizabeth Warren, Anti-Corruption and Public Integrity Act, 115th Congress, S.3357.

¹² CARES Act, § 4026.

Inspector General, the Congressional Oversight Panel, or the Pandemic Response Accountability Committee.

In a letter sent last week, I asked that, before turning to corporate bailouts, you address the needs of state and municipal governments that face desperate budget shortfalls as they attempt to respond to the nationwide coronavirus pandemic.¹³ I hope that you will do so rapidly. But in the coming weeks and months, as you turn to other priorities, I will be watching your actions carefully as you administer this \$500 billion bailout for corporate America, and will be providing additional information on the need for these principles.

I would be happy to discuss these matters in more detail with you or your staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren", written over a horizontal line.

Elizabeth Warren
United States Senator

¹³ Letter from Sen. Elizabeth Warren to the Honorable Steve Mnuchin, March 27, 2020, <https://www.warren.senate.gov/oversight/letters/warren-urges-mnuchin-to-use-massive-bailout-fund-in-coronavirus-rescue-bill-to-help-states-and-municipalities-before-giant-corporations>.